

THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Civil Writ Petition No. 182 of 2001 (S/S)

Sri Mahendra Kumar Sharma,
S/o Panna Lal Sharma,
R/o Joshi Bhawan in front of Rishi Kul Ayurvedi College,
Haridwar.

---Petitioner.

Versus

1. U.P. Public Service Tribunal, Lucknow through its Chairman.
2. State of U.P. through its Secretary Medical and Health Service, Vidhan Bhawan, Lucknow.
3. Director of Ayurvedic Evam Unani, U.P. Sarojni Naidoo Marg, Lucknow.
4. Principal of Rishikul Ayurvedic College.

---Respondents.

Sri Jitendra Chaudhary, Advocate, learned counsel for the Petitioner.
Learned Standing Counsel for the respondents.

**Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S.Verma, J.**

Dated: May 06, 2005

By means of this writ petition the petitioner has prayed for issue of a writ of certiorari quashing the impugned judgment and order dated 27-5-1995 passed by the Public Services Tribunal, Lucknow in Claim Petition no. 429/II/88 Mahendra Kumar Sharma Vs. State of U.P. through Secretary, Medical and Health Services and others whereby the learned Tribunal dismissed the Claim Petition denying the admissibility of the pay scale of Rs.430-685 as well as arrears of pay etc. prayed for by the claimant-petitioner.

According to the petitioner, he was appointed as X-Ray Technician in Rishikul Ayurvedic College, Haridwar, on 27-6-1966 in the pay scale of 75-5-120 on a permanent vacancy as per advertisement and interview. The petitioner completed the stipulated provision period and was confirmed on the said post. According to the petitioner there was no complaint against his work, which was

throughout satisfactory and the scale of pay (75-5-120) was revised to Rs. 120-220 in or about 1969. Subsequently, the aforesaid college along with other colleges was taken over by the State Government and the petitioner was absorbed in the said college and by order dated 27-8-1983, he was regularized on his post of X-Ray Technician on the pay scale approved by the State Government. According to the petitioner, there was revision in the pay scales in the year 1981 applicable w.e.f. 1st July 1979. Subsequently, the X-Ray Technicians were given pay scale of Rs. 430-685 vide Government Order dated 1-9-1984. According to petitioner there was no separate cadre or grade for trained and untrained X-Ray Technicians and there was no justification to assign the pay scale of Rs. 330-495/= after the revision of pay scale w.e.f. 01-7-1979. The main grievance of the petitioner is that even subsequently the scales of pay of the State Government Employees were revised w.e.f. 01-1-1986 by which the X-Ray Technicians were given the pay scale of Rs. 1350-2200, but since the pay scale of Rs. 330-495/= did not find mention in the relevant Government Order of the year 1989 whereby the pay scales were revised w.e.f. 1-1-1986 and the petitioner was compelled to remain in the pay scale of 330-495/= along with the writ petition the petitioner has filed a number of annexure.

We have heard Sri Jitendra Chaudhary, learned counsel for the petitioner, as well as learned Standing Counsel appearing on behalf of the respondents and have perused the record.

The learned counsel for the petitioner submitted that since the petitioner has already completed more than 21 years of continuous and satisfactory service, therefore, he may be presumed as a trained X-Ray Technician and entitled to the pay scale of Rs. 430-685/=.

The learned Standing Counsel has drawn our attention to annexure 5 filed by the petitioner himself whereby the pay scales of the Officers and Employees of the Ayurvedic Department were

revised in view of the recommendations made by the Anomalies Committee, which is dated 15-9-1989 and it was submitted that the pay scale in respect of X-Ray Technicians is mentioned at Sl. No. 38 and in the remarks column it has been mentioned that the scale should be given to the persons having requisite certificate/diploma prescribed by the Government of India. It was argued that since the petitioner has not shown that he is possession the requisite certificate/diploma, therefore, he is not entitled to the relief sought for by him and that the Public Service Tribunal has rightly dismissed the petition of the petitioner vide order dated 27-5-1995.

We have considered the submissions made on behalf of both the parties and have scrutinized the impugned judgment and order dated 27-5-1995 passed by the learned Tribunal. It is pertinent to mention that the petitioner could not at all show to us that he is a trained X-Ray Technician or that he can be treated as such by virtue of his alleged long-standing service. It is also important to mention that all the grounds raised before this Court in this writ petition have already been considered by the Public Service Tribunal in its impugned judgment. We have perused the Government Order No.5626 Sec. 9/Panch-488/88 dated 15-9-1989 (Medical Section-9) by which the Government has revised the pay scales of different class of employees including that of X-Ray Technicians. This documents has been filed by the petitioner in support of his claim. At Sl.No. 38 the pay scale of X-Ray Technician has been shown as on 1-1-1986 430-685/= and 450-720/= and the revised scale as 1350-2200/=. It is clearly mention in the remarks column that the pay scale were applicable to the persons holding requisite certificate/diploma prescribed by the Government of India. In our opinion this document, relied upon by the petitioner itself, speaks against the case of the petitioner. Since the petitioner could not show that he is having the requisite certificate/diploma prescribed by the Government of India, it is not open to him to claim the pay scale of Rs. 430-685/= prevailing prior to 1st January 1986 and revised subsequently.

A perusal of the impugned judgment and order passed by the Public Service Tribunal shows that the Tribunal considered the argument of the petitioner regarding the parity of X-Ray Technician vis-à-vis Dark Room Assistant. The Tribunal has observed in paragraph 6 of the judgment that the petitioner had failed to show that an untrained X-Ray Technician on the basis of 21 years of service will be deemed to be a trained one and it is not disputed that there are separate pay scales for trained and untrained X-Ray Technicians.

Learned counsel for the petitioner lastly submitted that the petitioner having gained sufficient experience after many years of service shall be treated to be a trained X-Ray Technician. In support of his contention, reliance was placed upon the case of **Bhagwati Prasad Vs. Dehli State Mineral Development Corporation (AIR 1990 Supreme Court page 371)**. In that case before the Apex Court the provisions of Articles 39(d), 309 and 311 of the Constitution of India were discussed and it was held-***Equal pay for equal work-Daily rated workers- Appointment-Workers not possessing initial minimum prescribed educational qualification at the time of appointment-Gaining sufficient experience after many years of service-Confirmation cannot be refused to them on ground that they did not possess requisite qualification-They would be entitled to pay equal to persons appointed in regular basis.*** The facts of the case before the Apex Court are quite different from the facts of the instant case. The matter before the Apex Court was that of confirmation and between a daily rated workers vis-à-vis regular workers. In the instant case the matter relates to grant of specific pay scale meant for trained class of employee which the petitioner claims without having a prescribed diploma/certificate for the same. The case law relied upon by the petitioner is of no avail to him.

In the result, we do not find any illegality or infirmity in the impugned judgment and order. The writ petition is devoid of merit and must fail.

The writ petition is dismissed. No order as to costs.

A.R.

(B. S. Verma, J.)

(P. C. Verma, J.)